



सत्यमेव जयते

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.

(Thursday the 22nd day of October, 2020)

APPEAL Nos.4/2019 & 359/2019

Appellant : Secretary
Athura Seva Sangham
Athurasramom
S. Puram P.O., Kurichy
Kottayam - 686532

By Adv.M.P. Madhavankutty

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office
Thirunakkara
Kottayam – 686001

By Adv.Joy Thattil Ittoop

This case coming up for final hearing on 10.03.2020 and this Tribunal-cum-Labour Court on 22.10.2020 passed the following:

ORDER

Appeal no.04/2019 is filed from order no.KR/KTM/20507/APFC/Penal Damage/14B/2018-19/2231 dt.31.10.2018 assessing damages U/s 14B of EPF & MP Act (hereinafter referred to as 'the Act') for belated remittance of

provident fund contribution for the period from 06/2001 to 09/2014. The total damages assessed is Rs.29,21,453/-.

2. **Appeal no.359/2019** is filed from order no.KR/KTM/20507/APFC/Penal Damage/14B/2019-20/1025 dt.03.06.2019 assessing damages U/s 14B of EPF & MP Act for the belated remittance provident fund contribution for the period from 07/2013 to 10/2017. The total damages assessed is Rs.3,86,344/-. The appellant herein is one of the school run by Athura Seva Sangham, Kottayam.

3. Common issues are raised in both the appeals. Hence both the appeals are heard together and disposed of by a common order.

4. The appellant establishment is a charitable society registered under Charitable Societies Act, 1955. The appellant in appeal no.359/2019 is a school run by the trust. The above trust is formed for promoting medical relief, art, charity, education and culture. The appellant is running 19 working women hostels with the aid from Central Social Welfare Department and controlled by State Social Welfare Department. The appellant is also running two schools and charitable dispensaries. All the above establishments are run without any profit motive and for the benefit of the public at large. There was some delay in remittance of provident fund contribution because of financial difficulties. The respondent initiated action U/s 14B of the Act. The

appellant appeared before the respondent for a personal hearing and explained the facts. Without considering the submissions made by the appellant, the respondent issued the impugned order. The appellant produced statements of assessment of Income Tax for the years 2015-16, 2016-17, 2017-18. The impugned order is issued mechanically without considering the submissions made by the appellant. The respondent did not exercise the discretion available to him U/s 14B of the Act. There is no finding by the respondent with regard to mensrea or actus reus to contravene the statutory provision. The Hon'ble Supreme Court in **Employees State Insurance Corporation Vs HMT Ltd**, AIR 2008 SC 1322 and in **APFC Vs Management of RSL Textiles Ltd**, 2017 (3) SCC 110 held that there shall be an element of mensrea or contumacious conduct or wilful disobedience of law while levying penalty. After the introduction of Sec 7Q by Amendment Act 33 of 1998, Sec 14B has become purely a penal provision. Hence the legal position laid down by **Organo Chemicals Vs UOI**, 1979 (4) SCC 573 has substantially changed.

5. The respondent filed counter denying the above allegations. The appellant establishment admittedly delayed the remittance of provident fund contribution which attracts damages U/s 14B of the Act read with Para 32A of EPF Scheme. Hence a notice was issued to the appellant along with a delay

statement. The appellant was also offered a personal hearing to appear in person and show cause the reasons for delay. Five opportunities were given to the appellant to represent his case. During the course of enquiry, the appellant submitted few challans of bulk remittance made for certain months. On the basis of the evidence produced by the appellant, the delay calculation sheet was revised and the date of remittance was taken as per the challans submitted by the appellant. A revised calculation sheet along with a summons was forward to the appellant. A representative of the appellant appeared in the enquiry and admitted the calculation as per the revised statement. The representative also submitted that the delay in remittance was due to retrospective coverage. The question of financial difficulty was not at all raised by the appellant before the respondent during the Sec 14B proceedings. The Hon'ble Supreme Court in **Hindustan Times** case, AIR 1998 SC 688 held that " default on part of the employer based on the plea of power cut, financial problems relating to other indebtedness or the delay in realisation of amount paid by cheque or drafts cannot be justifiable ground for the employer to escape liability ". The Apex Court in **Organo Chemicals** case 1979 (4) SCC 573 observed that even if it is assumed that there was loss as claimed, it does not justify the delay in deposit of provident fund money which is an unqualified statutory obligation and cannot be allowed to be linked

with financial position of the establishment over different points of time. In **Chairman, SEBI Vs Sriram Mutual Funds**, Civil Appeal no.9523-9524/2003 the Hon'ble Supreme Court held that mensrea is not an essential ingredient for contravention of provisions of a civil Act.

6. The learned Counsel for the appellant argued that in view of various decisions by Hon'ble Supreme Court the respondent ought to have examined whether there is any element of mensrea in the delayed remittance of contribution. According to the learned Counsel for the respondent, mensrea is not relevant in civil disputes. He further pointed out that the appellant failed to even remitting the employees' share of contribution which was deducted from the salary of the employees while paying the salary. Non payment of employees' share of contribution deducted from the salary of the employees is an offence U/s 405/406 IPC. Having committed a breach of trust U/s 405/406, the appellant cannot plea that there is no mensrea in belated remittance of contribution. The learned Counsel for the appellant also argued that there was no wilful disobedience of the provisions of the law and therefore he is entitled for some relief. The appellant produced 3 Income Tax returns and financial statements to prove his financial difficulty. It is not clear how these documents will establish the financial position of the appellant establishment. If the appellant establishment had real financial difficulties it

was upto the appellant to produce the relevant financial statements such as balance sheet, profit and loss account etc. of the relevant period before the 14B authority. Even in this appeal the documents produced by the appellant will not be of much help to him to substantiate the claim of financial difficulties. In **ESS DEE Carpet Enterprises Vs UOI**, 1985 LIC 1116 the Hon'ble High Court of Rajasthan held that the pleadings and evidence not produced before this 7A or 14B authority, cannot be raised in the writ petition. It is true that after introduction of Sec 7Q into the Act in 1988, Sec 14B of the Act has become a purely penal provision. However it is not possible to accept the plea of the learned Counsel for the appellant that in view of this change the dictums laid down by the Hon'ble Supreme Court in **Organo Chemicals** case (Supra) is no more relevant. The learned Counsel for the appellant also submitted that the appellant establishment was covered retrospectively though the details of coverage under the Act are not available in the pleadings. The claim of the appellant is not denied by the respondent. Though legally it can be pleaded that allotment of code number is not relevant for compliance under the Act, there were some practical issues at the relevant point of time to comply without a PF registration. As rightly pointed out by the learned Counsel for the appellant, the Sec 14B as it stands now, is a penal provision and it is provided for thwarting the establishment from making continuous

belated remittance. Though there is no limitation in initiating action U/s 14B of the Act, the very intention of legislature to warn the defaulting employers of the consequence of delay payments will be lost if the damages are not levied in time. In this case it is seen that the 14B proceedings were initiated after 13 years and the appellant got the implications of Sec 14B only when the show cause notice for levying damages was received by them. Hence it will be appropriate if 14B proceedings are initiated immediately after finalisation of the annual accounts so that there will be adequate warning to the defaulting establishments regarding the consequence of delayed payments of contribution.

7. Considering all the facts, circumstances and pleadings in this case, I am inclined to hold that interest of justice will be met if the appellant is directed to remit 70% of the damages assessed as per the impugned order.

Hence the appeal is partially allowed, the impugned order is modified and the appellant is directed to remit 70% of the damages assessed U/s 14B of the Act.

Sd/-

(V. Vijaya Kumar)
Presiding Officer